

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-00601(DLI)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Wednesday, August 2, 2017
YING LIN,	:	10:00 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR MOTION
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES CHIEF JUDGE

A P P E A R A N C E S:

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1 THE COURT: Good morning. Please be seated.

2 THE COURTROOM DEPUTY: Criminal cause for oral
3 argument on motion, Docket No. 15-CR-601, *United States versus*
4 *Ying Lin*. Please state your appearances.

5 MR. PRAVDA: Good morning, Your Honor. Doug Pravda,
6 Ian Richardson, and Alexander Solomon for the United States.

7 THE COURT: Good morning. Please be seated.

8 MS. COLSON: Good morning, Your Honor. Deborah
9 Colson for Ms. Lin and I am here with Dorea Silverman, an
10 attorney in my office, and Sara Waldron, a paralegal.

11 THE COURT: Good morning to all of you.

12 Good morning, Ms. Lin.

13 Can I have the spelling of Ms. Silverman's name,
14 please.

15 MS. SILVERMAN: Yes, Your Honor. It is D-O-R-E-A,
16 and then Silverman is S-I-L-V-E-R-M-A-N.

17 THE COURT: Thank you very much.

18 Good morning.

19 Ms. Lin, you can sit down.

20 We are assisted today by the Mandarin language
21 interpreter. May we have your name, please, for the record?

22 THE INTERPRETER: Patsy Ong.

23 THE COURT: Good morning, Ms. Ong.

24 And would you please administer the oath to the
25 interpreter.

1 (Interpreter sworn.)

2 THE COURT: And good morning to all of our observers
3 who are here this morning.

4 This matter is on today for oral argument on the
5 defendant's motion to dismiss several counts of the
6 indictment, Counts One, Three, and Four, which relate to the
7 charges of smuggling. That's Count One. And the remaining
8 Counts Three and Four relate to obstruction of justice
9 charges.

10 I am going to ask everyone to keep in mind that Ms.
11 Lin is being assisted by the Mandarin interpreter, so if you
12 could please try to speak slowly and in short sentences to
13 allow the Mandarin interpreter sufficient leeway in doing her
14 translation.

15 And, Ms. Ong, if there is anything you don't hear or
16 if you need to have something repeated, or if anyone is
17 speaking too quickly, please let us know, give me a sign and
18 we will try to rectify it. Okay?

19 THE INTERPRETER: Yes.

20 THE COURT: You can remain seated. I am going to
21 ask everyone as well to remain seated and make sure that you
22 speak into the microphones so that we can hear each other
23 better, so that the reporter can hear and, importantly, so
24 that our folks in the audience can hear, because they won't
25 hear anything if we don't speak into the microphones.

1 I'd like to address the smuggling issues that have
2 been raised first. There are a number of arguments that the
3 defense has raised in connection with that charge.

4 I would like to know, first of all, the Government
5 can address one of the points that was raised by the defense,
6 with respect to the TSA implementation regs that were
7 allegedly supposed to have been implemented. In the first
8 place, the defense alleges that the TSA regulations that were
9 supposedly violated by the Defendant were not specified in the
10 indictment, which is supposed to contain specific allegations,
11 at least to lay out the elements of any statutes that are
12 supposed to have been violated.

13 According to the Government, how does the Government
14 counter that argument given that there is no mention, at the
15 minimum, of which regulations were violated?

16 MR. PRAVDA: Your Honor, if I may address that
17 argument. When we set forth in the indictment what the
18 Section 554 violation was, we explained that it was contrary
19 to specify statute and to the TSA implementing regulations.
20 Now the Court is correct that we didn't cite to any specific
21 regulation. We acknowledge that. But the notice that is
22 required by indictment can be provided in one of two ways, one
23 is with a citation to the specific factual subsection, the
24 specific regulation that is being violated, and the other is
25 with sufficient factual allegation to put the defendant on

1 notice of what it is that the Government is alleging.

2 And here, the factual allegations that are set forth
3 in the superseding indictment at paragraphs six, seven, and
4 eight, which are under the heading the defendant smuggling
5 activities, set forth exactly what conduct we are alleging
6 that the defendant committed that it is in violation of those
7 regulations.

8 Now, with respect to the argument that the
9 Government needed to set forth the elements of the underlying
10 crime, that's actually not correct, Your Honor. There is no
11 need for the Government to prove that the defendant violated
12 554 and the underlying statute and regulation. And what
13 happened, Your Honor, is that in a number of different
14 circuits, and we cited this in your brief on, I think it is
15 page 12, we cited cases from a number of different circuits,
16 all of them are circuit level cases, making clear that in the
17 specific context of a 554 claim the Government is not required
18 to prove to the jury that the defendant had violated each of
19 the individual elements of the underlying statute or
20 regulation. And the reason why these cases came up, Your
21 Honor, to the circuit level on this particular question is
22 because in many of them the district judge did not instruct
23 the jury in the jury instruction as to what the elements of
24 the underlying --

25 THE COURT: But there are no Second Circuit cases

1 dealing with this from the circuit itself; correct?

2 MR. PRAVDA: That is correct, Your Honor. This is
3 actually relatively recent statute that was passed, I believe
4 in 2005 or in 2006.

5 THE COURT: Well, considering that the Second
6 Circuit has many court districts, this one included, there are
7 many airports within the Second Circuit, it is a little
8 surprising that there wouldn't be any case law on this issue,
9 which actually comes to another point that the defense raises,
10 which is that there have been no prosecutions that at least
11 the defense could find, and I didn't see that the Government
12 pointed to any, where a prosecution was brought for smuggling
13 where there was no contraband in, in this case, the suitcase
14 is at issue or the package is at issue, and, basically, the
15 essence of the smuggling is that the suitcases were not
16 attached to the ticketed passenger.

17 Have there been any such prosecutions? I am not
18 aware of any in this district.

19 MR. PRAVDA: Well, there have been -- well, first of
20 all, Your Honor, the statute did not limit it to the
21 contraband itself being an item or an object that is on some
22 export list. The statute is actually much broader than that
23 because it talks not only about exporting or sending
24 merchandise or articles out of the United States but also
25 about things like facilitating transportation, concealing

1 those objects, those articles and those merchandise knowing
2 that those items are intended for export. So as an initial
3 matter --

4 THE COURT: Intended for export contrary to the laws
5 of the United States, so most of the cases that have be
6 referenced dealt with drugs, with firearms, with explosive
7 devices.

8 What was smuggled here, allegedly? Just for the
9 record, we are all talking about allegations here, just in
10 case sometimes it gets cumbersome to say allegedly every two
11 seconds.

12 MR. PRAVDA: Your Honor, one of the cases that we
13 pointed to now was a case called *United States v. Ibrahim*,
14 which is a case from 2013 out of the Northern District of
15 California. In that case there were two counts of 554 and one
16 of those counts was based on an attempt to ship chemicals
17 without the proper shipping papers and labeling. So the
18 violation wasn't that the chemicals themselves were on some
19 export list somewhere but that the manner in which the
20 chemical was shipped, meaning without the proper shipping
21 papers and labeling, goes to the manner in which an item has
22 been sent out of the United States, which is the same type of
23 charge that the Government is bringing here, that the manner
24 in which these bags were checked on to airplanes either as
25 unaccompanied bags or checked on to airplanes in the name

1 names of other ticketed passengers to whom those bags did not
2 actually belong was a manner of sending or exporting items
3 outside of the United States, so clearly contrary to the
4 underlying TSA regulation.

5 THE COURT: Would you like to address that argument,
6 Ms. Colson?

7 MS. COLSON: Yes, I have a very different reading of
8 *Ibrahim*. I believe that the case actually helps Ms. Lin. It
9 is a case which concerns the exportation of hazardous
10 materials and it is focused on those hazardous materials,
11 whereas here we have a case that is not focused on the export
12 content. The issue in *Ibrahim* was one of statutory
13 construction. It was whether a statute which generally
14 regulates the shipment of hazardous chemicals also applied to
15 foreign exports and the Court held that 554 could be applied
16 to laws which regulate interstate commerce as well as foreign
17 commerce. But the statute itself that was at issue regulated
18 the contents of the materials and the case itself also focused
19 on the content, which was the hazardous materials.

20 THE COURT: I am looking at the statute and the
21 statute says any merchandise, article, or object contrary to
22 any law, regulation of the United States.

23 Now, what is it that is alleged to have been
24 smuggled in the packages at issue?

25 MR. PRAVDA: Your Honor, we are not making any

1 specific allegation as to the content of the packages, but in
2 terms of the --

3 THE COURT: I want a direct answer. What is it that
4 was alleged to have been smuggled?

5 MR. PRAVDA: The packages that were being sent by
6 the PLC military officers back to the Peoples Republic of
7 China?

8 THE COURT: Yes.

9 MR. PRAVDA: That's what is alleged to have been
10 smuggled, and what happened was there is a proper way in
11 which --

12 THE COURT: What was it?

13 MR. PRAVDA: You mean what was inside it?

14 THE COURT: Yes.

15 MR. PRAVDA: Well, that's something that the
16 Government is not making a part of its case, Your Honor.

17 THE COURT: I don't care whether you are making it
18 part of your case or not. I asked you a direct question. Why
19 can't you answer the question? Either you know or you don't
20 know. These cases address the content of what was smuggled,
21 the actual items themselves.

22 MR. PRAVDA: Your Honor --

23 THE COURT: And I think that depending on how you
24 read the statute, and, again, and I have not made up my mind
25 on this, that is why I wanted to have oral argument today, is

1 depending on how you read the statute, it says whoever
2 fraudulently or knowingly exports or sends from the United
3 States, or attempts to export or send from the United States,
4 any merchandise, article, or object contrary to any law or
5 regulation of the United States, or receives, conceals, buys,
6 sells, or in any manner facilitates the transportation,
7 concealment, or sale of such merchandise, article or object.

8 To me, that sounds like it is relating to the
9 article that is being exported, which is why these cases talk
10 about explosives and narcotics and firearms and so on. So,
11 yes, it is relevant. Whether you think you need to make it
12 part of your case or not, I am telling you that it is relevant
13 to my analysis.

14 MR. PRAVDA: Well, Your Honor, just to remind --

15 THE COURT: Are you alleging that it is an
16 explosive, a firearm, an incendiary device, narcotics or
17 anything like that?

18 MR. PRAVDA: Just to remind the Court, we addressed
19 the content of the packages in the Government's classified
20 CIPA filing, but our allegation, the one that we are going to
21 prove in this unclassified setting relates not to the content
22 of those boxes but to the manner in which the defendant
23 proceeded to assist in sending those boxes outside of the
24 United States.

25 In the Government's theory of the prosecution the

1 bags or the boxes that are being sent out aside of the United
2 States are the merchandise, article, or object. And in terms
3 of the reading of the statute, it is a little bit odd to
4 describe a merchandise, an article, or an object as contrary
5 to a law or regulation. It is not the underlying object that
6 is contrary to law; it is the export of that object that is
7 contrary to law. And the Government's reading of the statute
8 is that it covered not only what the underlying item is but
9 also the manner in which that item is exported, and we think
10 that that is supported by the second half of this statute
11 which goes not simply to the act of export but also to the act
12 of facilitating the transportation, concealment, or sale of
13 that object before it is exported, and that taken together,
14 the statute criminalizes conduct that evades United States
15 export controls regardless of what the individual item is that
16 is inside those boxes.

17 THE COURT: Well, what is the intent of the TSA
18 regulations?

19 MR. PRAVDA: The intent of the TSA regulation that
20 we have cited here is to set up a screening process that is
21 designed to make sure that all items go through the required
22 screening process in order to --

23 THE COURT: Did the particular items here go through
24 TSA screening?

25 MR. PRAVDA: Well, these particular items were

1 placed on airplanes in a manner designed to evade TSA
2 requirement --

3 THE COURT: I understand that, separate and apart
4 from the fact that the person did not match the baggage,
5 right?

6 MR. PRAVDA: Right.

7 THE COURT: That's the allegation here. The person
8 did not match the baggage. There is a TSA regulation that
9 says baggage must match the person.

10 MR. PRAVDA: Yes.

11 THE COURT: But the baggage also goes through
12 another screening process, they're X-rayed. Sometimes they
13 are manually checked. Did the bags passthrough that screening
14 process?

15 MR. PRAVDA: We're not alleging that they did not.
16 But, Your Honor, this is not a case about --

17 THE COURT: I don't like double negatives; we are
18 not alleging that they did not.

19 MR. PRAVDA: Your Honor, I cannot affirmatively say
20 that they did. I am saying the Government is not going to
21 present evidence that they did not. I'm not trying to be cute
22 about it. We don't know if it went through the screening, but
23 we are not going to say that it did not go through the
24 screening.

25 But, Your Honor, this is not a case about the

1 efficacy of the TSA's screening process. We all know -- we
2 call see media reports that numerous weapons, explosives,
3 other objects get through TSA screening all the time, far more
4 than any one of use cares to admit, but this is not part the
5 Government's case. The regulation issue requires checked bags
6 to match up to the passenger who checks the bags because that
7 is a manner not only of preventing but also deterring people
8 who would send hazardous or unsafe materials or explosives on
9 board airplanes. And the TSA requires this process to be
10 followed as a means of deterring and preventing that kind of
11 conduct and that means essentially prohibiting a broader form
12 of simply not sending explosives on an airplane so that they
13 can deter people who would do that and those --

14 THE COURT: First of all, the TSA regulations were
15 passed right after 9/11, right. So the intent is to deter
16 dangerous devices from getting on planes, basically.

17 MR. PRAVDA: Frankly, what 9/11 did was 9/11 exposed
18 a huge security gap in the screening processes, and, yes, the
19 regulations were passed to --

20 THE COURT: So is it your position that if the
21 suitcase contained a suitcase full of mittens that were
22 purchased at Macy's and got on the plane under the
23 circumstances here that a person didn't match the baggage,
24 that that per se is a violation of Section 554?

25 MR. PRAVDA: Not at all, Your Honor, because there

1 is mens rea of willful and knowing, and our argument is that
2 when the defendant took these actions of putting unaccompanied
3 bags on the airplanes and they are checking those bags in
4 under the names of other passengers she did so with the
5 specific intent to evade the security procedures that the TSA
6 has set up.

7 THE COURT: No, you are not answering the question.
8 I said otherwise under the circumstance here, if that is what
9 the luggage contained, would that be a violation of Section
10 554?

11 MR. PRAVDA: Well, I think the Government's
12 position, Your Honor, is that if you willfully take an object
13 that has been brought to an airport and put it on an airplane
14 without going through any screening whatsoever because you
15 intended to evade that screening process, it doesn't matter
16 whether there was a bomb or something else in that bag,
17 because what the defendant did was a knowing and willful
18 violation of the TSA's screening procedures. She was trained
19 on those procedures. She knew what they were. We all know
20 that you can't just bring any package to a commercial airline
21 and say hey, can you ship this wherever the destination is.
22 We all know that you can't check-in bags under another
23 person's name. But when you deliberately, as the defendant
24 did, circumvent those kinds of screening procedures, that's
25 the violation, whether or not there is a bomb in that box.

1 THE COURT: Do you wish to be heard on that, Ms.
2 Colson?

3 MS. COLSON: Yes, I would first start off by saying
4 the Government has mentioned that they addressed the content
5 of their packages in their ex-parte CIPA filings. I obviously
6 have not seen those filings, but if it is at all relevant to
7 the Court, as I think it should be, what was inside those
8 packages, then I think that I should also be made aware of
9 that. The Government has made absolutely no allegation as to
10 the content of the baggage. It is not clear to me whether the
11 Government even knows what was inside the baggage at all. And
12 certainly it doesn't, as the Government has stated, appear to
13 be its primary concern here. But if I am wrong about that and
14 the Government is concerned about the content of the baggage
15 and has disclosed it to the Court in confidential filings, I
16 would respectfully request that I should be made aware of
17 that.

18 But, Your Honor, I do believe that the plain
19 language of 554 itself focuses on the merchandise article or
20 object to be exported. And as the Court stated, it says that
21 those objects must be contrary to law. And that
22 interpretation of 554 is explicit in every 554 case ever
23 decided. Every 554 case we have found concerns the
24 exportation of contraband or heavily-regulated substances.

25 The Government does not appear to allege here that

1 Ms. Lin aided and abetted the smuggling of contraband or
2 heavily-regulated substances. The Government's primary
3 concern is that she aided and abetted a violation of a
4 procedural regulation concerning checked baggage and they have
5 not cited a single case in which 554 has been used to
6 prosecute violations of procedural regulations. The only case
7 that they have cited, as Mr. Pravda noted, is *Ibrahim*. And
8 for the reasons I stated before, *Ibrahim* is not applicable
9 here and, in fact, assists Ms. Lin.

10 I would also add, Your Honor, there is another flaw
11 in the Government's legal theory, which is that they fail to
12 allege a principal violation. The Government does not have to
13 charge the principal in order to charge an aider and abettor,
14 but they do have to prove that the principal committed a
15 crime. And here, they have failed to allege that Ms. Lin's
16 former employer actually committed a crime, and nor can they
17 even make such an allegation even if they wanted to because
18 whatever the unaccompanied baggage contained, Air China was
19 merely the shipping agent for that baggage. They did not own
20 or export the baggage. According to the Government, the
21 baggage belonged to members of the PRC Mission and consulate.
22 The Government does not cite a single case in which a shipping
23 agent, rather than an owner/exporter, has been charged with
24 smuggling under 554. That is another fatal flaw in the
25 Government's legal theory.

1 THE COURT: Can I stop you there? I would like to
2 hear the Government's response to that argument.

3 MR. PRAVDA: Yes, Your Honor. The requirement under
4 an aiding and abetting theory is actually that the government
5 prove that the crime was committed and that the defendant
6 aided and abetted the commission of that crime. But Ms.
7 Colson seems to be suggesting that the Government had to
8 identify the principal who committed the crime in the
9 indictment and that is actually not right. In fact, I pulled
10 out Judge Sand's jury instructions on aiding and abetting in
11 response to the defense argument and it makes clear that it is
12 not necessary that the principal even be identified for an
13 aider and abettor to be convicted as long as the evidence
14 demonstrates that the offense was committed and that the
15 defendant knowingly acted in a way to affirmatively evade that
16 crime. So it is not something that the Government needs to
17 prove. It is also not something that the Government needs to
18 charge in the indictment. And, in fact, it is fairly common
19 for the Government to charge in all sorts of context aiding
20 and abetting where there is no allegation as to who the
21 principal even is. So, for example, in drug courier cases
22 where a courier imports drugs into the United States, you
23 routinely charge them with aiding and abetting in the
24 importation, as well as the actual importation itself, even
25 though many of those cases you have no idea who the person is

1 that gave the drugs to that courier to bring into the United
2 States, and there has never been any issue that has been
3 raised with us charging in that kind of way. Given that it is
4 not required that the Government identify the principal or
5 prove the principal to the jury, I can't see why it would
6 matter in this case.

7 Now, having said that, we all know who is alleged to
8 be the principal here. There is no mystery that it is the
9 defendant employer. It is just simply not a fact that has to
10 be charged in the indictment.

11 MS. COLSON: Your Honor, may I respond to that?

12 THE COURT: Yes.

13 MS. COLSON: I think the Government misunderstands
14 what I'm saying. It is not simply the failure to identify the
15 principal, but it is a failure to allege that the principal
16 actually committed a crime. In order to prove that someone
17 aided and abetted the crime of a principal, the Government is
18 required to prove that a principal, at least some principal,
19 whoever that person is or entity is, committed a crime, and
20 they have failed to make such an allegation here. Nor, for
21 the reasons I articulated before, can they make such an
22 allegation because in this case, the principal, who they have
23 identified, was merely the shipping agent for that baggage and
24 not the owner/exporter of the contents of that baggage.

25 Your Honor, it is --

1 THE COURT: Can I stop you there? I would like to
2 hear the Government's response to the defense argument that
3 the carrier is merely a shipping agent and not the actual
4 entity that is exporting and presumably are the people who
5 wanted to have the bags shipped that are the actual exporters.
6 So the defense is arguing that the carrier is acting simply as
7 a shipping agent and thus would not be liable.

8 MR. PRAVDA: Because the carrier is the one who is
9 violating the regulation. So the regulation sets up the
10 security screening requirements. It is the carrier violating
11 that and the employees of the carrier are aiding and abetting
12 that violation by facilitating those boxes being placed on
13 planes either unaccompanied or in the names of passengers who
14 were not the people who delivered the boxes, and that falls
15 squarely within both exporting and in terms of transporting or
16 concealing the object contrary to law or regulation, which is
17 both halves of the 554 statute. There is nowhere in here that
18 says that there is an exception for a shipping agent. You
19 know, we don't say to follow my drug courier, for example,
20 that just because the drug courier is the person bringing the
21 drugs in but is not actually the owner of the drugs, that that
22 makes them not liable. It is the same analogy here. The
23 carrier is the one that is the violating the regulation and
24 the carrier is responsible for shipping those items contrary --

25 THE COURT: But the courier is actually the person

1 carrying something that is clearly contraband.

2 MR. PRAVDA: Yes.

3 THE COURT: So the courier is actually acting in the
4 place of the principal as the actual exporter, especially if
5 you talk about couriers that are swallowers. They are
6 everything. They are exporting. They are the package. They
7 are everything. Isn't that different, if they get on JetBlue
8 airlines, JetBlue airlines is carrying the courier. The
9 courier is the package. So JetBlue is liable?

10 MR. PRAVDA: Well, in that example, Your Honor,
11 JetBlue is the entity --

12 THE COURT: It is an extreme example, but if I
13 extrapolate your argument.

14 MR. PRAVDA: I understand, Your Honor, but even in
15 that example, JetBlue is the entity that is carrying the bags.
16 But here, the exporter, by definition, is the person who is
17 physically taking the object across the border outside the
18 United States. Here, that is the air carrier. The air
19 carrier is the exporter here. They are the ones who are
20 taking the bags from inside the United States to a place
21 outside the United States.

22 THE COURT: So your claim is that they are not
23 acting as a shipping agent?

24 MR. PRAVDA: Because they know that the manner of
25 the export is in violation of the regulation. So that's why

1 the exporter, they are violating 554 because they know that
2 these security procedures are in place to prevent what they
3 are permitting to happen.

4 MS. COLSON: I think that's why they may be
5 violating the Regulation 203A, but that doesn't mean that that
6 violation of the regulation is also a violation of 554, and
7 that's what we dispute here. The Government has not
8 identified any cases in which violation of a procedural
9 regulation has been found to constitute smuggling under 554,
10 nor have they identified a single case in which a shipping
11 agent rather than the exporter has been held liable.

12 THE COURT: Part of what I am having trouble
13 wrapping my head around here is the fact that the Government
14 didn't identify a specific regulation that was violated here,
15 so we are forced to sort of track down all the regulations
16 that might apply to Section 554 as implementing that statute.
17 And then there is at least one section that is discussed by
18 the defense, 49 CFR Section 1546.103(b)(4), that discusses the
19 content of a security program for a foreign air carrier, and
20 the defense argument is that Ms. Lin is a U.S. citizen and
21 therefore she doesn't fit the definition of a foreign air
22 carrier and, therefore, that regulation does not pertain to
23 her.

24 MR. PRAVDA: I understand, Your Honor, and I think
25 that to the extent that the Court believes that that is a

1 problem, we would certainly be happy to supersede and correct
2 that. We do think that the factual allegations have been
3 sufficient to place the defendant on notice.

4 Actually, in their reply brief, the defense pointed
5 to a case from Judge Glasser called United States against
6 Thompson, and the argument in that case was that because it
7 alleged a sex crime contrary to law or regulation of a state
8 or federal government, it is basically transporting minors
9 across state lines to engage in sexual activity contrary to a
10 state or a federal law, and in that case the Government had
11 not identified any specific underlying statute to say that
12 that conduct was in violation of state or federal law. In
13 that case, Judge Glasser found that the allegation that the
14 defendant may have engaged in statutory rape wasn't mentioned
15 anywhere in the indictment and so the indictment was defective
16 in that regard. But he also upheld, Your Honor, an example
17 where the Government had alleged that the defendant had
18 transported minors for the purpose of engaging in prostitution
19 contrary to state law even though the indictment identified no
20 state law whatsoever and didn't cite to any state law
21 prohibiting prostitution, but Judge Glasser found that because
22 prostitution was sufficiently definite to put the defendant on
23 notice of the Government's allegation that the indictment was
24 therefore adequate in that respect.

25 And what we are saying, Your Honor, is that given

1 that the superseding indictment here has a paragraph that
2 details specifically what conduct the defendant is engaged
3 that we are saying was in violation of law or regulation, that
4 that likewise is also adequate. However, certainly to the
5 extent that this is a concern for the Court, we can supersede
6 to make clear the regulation that we believe the defendant
7 violated. It wouldn't be any substantive change to the
8 allegations; it would just be to add the specific citation and
9 explain how they were violated so that that language is in the
10 indictment as well.

11 MS. COLSON: Your Honor, may I respond to that?

12 THE COURT: Yes, and specifically why shouldn't the
13 Court give the Government an opportunity to supersede the
14 indictment to cure a pleading defect?

15 MS. COLSON: Yes. First, just to be clear about
16 what the pleading defect is, it is not merely the failure to
17 cite the appropriate regulations, it is actually more severe
18 than that. They actually cited regulations, or, at least,
19 quoted from regulations in their initial indictment that they
20 now acknowledge do not apply to Ms. Lin. In their opposition
21 brief they identified an entirely new regulation, 1546.203A,
22 which they did not cite, quote, or reference anywhere in that
23 initial indictment.

24 The issue with that regulation is that that
25 regulation governs the conduct of the air carrier; it does not

1 govern the conduct of Ms. Lin. So even that regulation is
2 inapplicable to Ms. Lin, which is why the Government then came
3 forward with the idea that Ms. Lin was just aiding and
4 abetting the air carrier.

5 THE COURT: But let me ask you something about that.
6 The air carrier is a company, it is an entity. In some ways,
7 it is a fiction when we say that a corporation is a person
8 even though for purposes of litigation it is treated as a
9 person. Doesn't a company, in this case, an air carrier,
10 violate the law when it permits its employees to violate the
11 law?

12 MS. COLSON: Well, I suppose --

13 THE COURT: How else would a corporation be in
14 violation of the law if not through the conduct of its
15 employees?

16 MS. COLSON: But I think what the Government is
17 saying, and maybe I have misread their brief, but what they
18 say on page 6 is that the air carrier intentionally violated
19 these regulations which led to unaccompanied baggage being
20 transported on air carrier flights. So it is my understanding
21 that it is not just that the Government claims the air carrier
22 turned a blind eye, but the air carrier itself engaged in
23 criminal conduct. I have several issues why the Government
24 shouldn't be able to supersede based on that theory. The
25 first, which is what we have already discussed, is that the

1 plain language of 554 focuses on a merchandise, article, or
2 object, and that every 554 case we have found concerns the
3 exportation of contraband or heavily-regulated substances. So
4 even if the Government identified the specific procedural
5 regulation they claim Ms. Lin violated, that would not be
6 sufficient to make out a violation of 554.

7 The second issue is that the Government has failed
8 to alleged in the indictment that the principal actually
9 committed a crime and nor, even if it was given the
10 opportunity, could it make such an allegation because whatever
11 the baggage contained, the principal in this case is a
12 shipping agent and not an exporter or owner, so that is why
13 the Government should not be permitted to supersede and
14 identify the appropriate regulation because that regulation
15 still doesn't make out a crime under 554.

16 THE COURT: So I would like to move on to the
17 obstruction arguments. I would like to hear the Government's
18 response to the defendant's argument that with respect to
19 obstruction that the Government failed to detail the official
20 proceeding. That is one thing. And secondly, that merely
21 assisting a foreign national to leave the United States during
22 the pendency of any investigation is not itself illegal. It
23 is two things.

24 MR. PRAVDA: Sure. Let me take the second one
25 first, Your Honor.

1 THE COURT: Okay.

2 MR. PRAVDA: I think the question of whether the
3 defendant's conduct is a violation of 1512(c)(2) turns on the
4 defendant's intent in engaging in that conduct. And I think
5 the clearest example that comes to mind, Your Honor, is simply
6 in a document shredding example. If I take this document and
7 put it in a shredder and cut it into a million pieces, nobody
8 is going to say that is a crime. But if I do the same thing
9 because I intend to obstruct a grand jury proceeding, then
10 that is a crime. So while it may not be a crime in the
11 abstract to help someone leave the United States, when the
12 defendant engaged in that conduct with the intent to obstruct
13 the grand jury proceeding, that is the crime that she engaged
14 in.

15 Now, with respect to the allegation of official
16 proceeding, we identified the proceeding in the indictment as
17 a federal grand jury proceeding in the Eastern District of New
18 York. That has been held in a number of different cases to be
19 adequate to identify the nature of the proceeding. The one
20 case that the defendant cited was a case where the official
21 proceeding was listed only as a proceeding and not even
22 identified as a grand jury proceeding, nor where that
23 proceeding was taking place. We pointed out in our brief why
24 the allegation that it is a grand jury proceeding in the
25 Eastern District of New York is adequate. They came back by

1 pointing to some factual allegations that are in that case
2 with respect to the defendant's conduct. And, quite candidly,
3 Your Honor, the same specificity with respect to the factual
4 allegation are in the Government's indictment, because it
5 specifically says that the Government was conducting an
6 investigation of a confederate of the defendant, who is a PRC
7 national who visited the United States in approximately 2015.
8 Many other facts -- this is from paragraphs 15, 16, 17 of the
9 indictment -- many other facts about who the confederate was
10 and specifically what the defendant did to encourage the
11 confederate to leave. So knowing that special agents of the
12 FBI had been asking questions specifically about the
13 confederate and knowing that -- I'm sorry, special agents of
14 the FBI asked her daughters questions about the confederate,
15 and she knew that her daughters had been served with subpoenas
16 in connection with an investigation, and knowing those things,
17 she immediately turned around and told the confederate, hey,
18 the FBI is asking a lot of questions about you, if you can get
19 out of the United States, you absolutely should do that right
20 away. And that is all alleged right here. She helped him
21 flee. She purchased his tickets. She told him that the
22 Government was interested in him and those actions were all
23 taken with knowledge that there was a federal grand jury
24 proceeding in the Eastern District of New York pursuant to FBI
25 agents asking questions about that person's activities. Those

1 allegations are more than adequate to put the defendant on
2 notice of the conduct that she is charged with committing.

3 THE COURT: Do you wish to respond?

4 MS. COLSON: Yes. I think they are not sufficient
5 and the reason is because the Government --

6 THE COURT: But even in your papers you agreed that
7 Congress has, and I am reading from page 12 your opening
8 brief, Congress has defined an official proceeding as one
9 before a judge or grand jury, and even the instructions on
10 obstruction of justice that are given to a jury will say that
11 a federal grand jury investigation is an official proceeding,
12 and it is alleged in the indictment.

13 MS. COLSON: That is correct. I do believe that a
14 federal grand jury investigation is an official proceeding.
15 What the issue is is that while the indictment alleges a
16 federal grand jury proceeding, the indictment does not
17 identify the target of that proceeding, the subject matter of
18 that proceeding.

19 THE COURT: But the indictment doesn't have to
20 allege that. I have never seen an indictment -- well, I have
21 rarely seen an indictment that charges obstruction of justice
22 where the allegation is that the conduct affected an official
23 proceeding that was a grand jury proceeding, that it says
24 specifically what that grand jury proceeding was.

25 MS. COLSON: I think that is sort of the point of

1 the Murphy case and also of the other cases that we cited,
2 Your Honor. The Murphy case in particular establishes that in
3 order to put the defense on specific notice, on adequate
4 notice, the Government must provide some information as to the
5 subject matter or the target of that proceeding. That is the
6 whole point of the Murphy case. What happened there is that
7 the Government didn't provide sufficient information and then
8 when the trial began, the Government identified one official
9 proceeding in its opening statement and another in its closing
10 argument.

11 THE COURT: First of all, that is a First Circuit
12 case from 1985. Secondly, the indictment here in the
13 introductory section identifies exactly the conduct and the
14 investigation.

15 MS. COLSON: But, Your Honor, the indictment --

16 THE COURT: We are not talking about a situation
17 where the Government is likely to switch gears, I would doubt.

18 MS. COLSON: I think the indictment in its factual
19 allegations says that it is investigating Mr. Qin's
20 activities, but then it doesn't identify any potential
21 criminal activities. So in our reading of the indictment, it
22 wasn't until the Government actually filed its opposition
23 brief that we understood that Mr. Qin was the actual target of
24 the federal grand jury proceeding, and that certainly wasn't
25 presented in the indictment, and so we query whether that was

1 presented to the grand jury.

2 THE COURT: Let me stop you there and let the
3 Government address that point.

4 MR. PRAVDA: Your Honor, paragraph 15 of the
5 indictment specifically says during the summer and fall of
6 2016, the Federal Government was investigating the activities
7 of a confederate. That's the defendant Ying Lin. I don't
8 know how else to say that the indictment doesn't adequately
9 convey that.

10 MS. COLSON: Well, I guess here's my issue: Ms. Lin
11 has been under indictment for two years now. Over the course
12 of that period, we have learned that there were and there
13 still may be several grand jury investigations in this
14 district alone that somehow touch upon or concern her or Mr.
15 Qin, and without identifying the subject matter or the target
16 of the grand jury investigation in the specific count, it is
17 possible that they could present one grand jury proceeding at
18 the beginning of case and one grand jury proceeding at the
19 end, or it's possible that they have presented one proceeding
20 to the grand jury in this case and will present another one at
21 trial.

22 THE COURT: But it seems to me that the person,
23 let's say the person that is called the confederate, didn't
24 necessarily need to have been a target of the investigation.
25 The person could have been looked at as a potential witness to

1 testify in the proceeding. It is not necessary that the
2 person necessarily have been involved in criminal activity,
3 him or herself.

4 There should not be any phones in this courtroom.

5 Who are you? In the back. Who had the phone?

6 A VOICE: Sorry, Your Honor, I thought it turned it
7 off.

8 THE COURT: Excuse me, who are you? Are you an
9 attorney?

10 A VOICE: No, I'm not an attorney. I am a linguist
11 for the FBI.

12 THE COURT: You need to go downstairs and turn in
13 your phone. You should not have had a phone in here.

14 A VOICE: My apologies.

15 THE COURT: You go now and you turn in that phone.
16 Don't you ever come into this courthouse without turning in
17 your phone.

18 Anybody else who has a phone who is not an attorney
19 needs to turn that phone in now.

20 I'm sorry.

21 I don't think that it is necessary under the law
22 that the person necessarily be a target. A person could have
23 pertinent information relating to an investigation that is
24 ongoing. Even if that person doesn't necessarily get called
25 as a witness before the grand jury, that person may have

1 information that leads to other witnesses who then are placed
2 before the grand jury and not having that information could
3 impede the ongoing investigation.

4 MS. COLSON: Of course, Your Honor.

5 THE COURT: And the Government has alleged in its
6 introduction, in the paragraphs that were identified by the
7 Government, number one, what that person's role was, what the
8 conduct is that the defendant is alleged to have engaged in,
9 specifically talking to him about his activity concerning
10 properties and management of properties.

11 MS. COLSON: Your Honor, I agree with you, that the
12 person does not have to be a target and could have merely been
13 a witness, but the issue that arose in Murphy and the reason
14 why this rule exists is because there could be multiple
15 investigations or grand jury investigations pending in a
16 single district simultaneously, which is exactly what I think
17 is happening here. In one of those investigations, the person
18 could be a target. In another one of those investigations,
19 the person could be a witness. And if the Government is not
20 obliged in its indictment to identify which of those
21 investigations actually is applicable to this case, then we
22 run the risk that they either, A, didn't present the
23 appropriate investigation to the grand jury, or, B, they will
24 raise one investigation, as they did in Murphy, in the opening
25 and another in the closing. So we have a very real issue

1 here, which is that I do believe there are multiple
2 investigations in this district which touch upon both my
3 client and Qin Fei.

4 THE COURT: Do you want to address that particular
5 argument?

6 MR. PRAVDA: Your Honor, I think that these
7 allegations in the indictment are sufficiently specific to
8 identify the Government's investigation. As the Court said,
9 it is not necessary that the Government specifically identify
10 a target of the investigation nor the Government do so in the
11 indictment. And, in fact, under 1512, there is actually no
12 requirement that a grand jury proceeding even be occurring.
13 It is adequate, under 1512, if the grand jury proceeding is
14 only reasonably foreseeable, not that one is actually
15 happening. So I think the level of detail that Ms. Colson is
16 asking for, it is just simply not required by 1512 to be
17 alleged in the indictment.

18 Given the specificity of the factual allegation, I
19 don't think we are anywhere close to the situation in Murphy
20 where there is any danger that the Government is presenting
21 one theory to the grand jury and a different theory to the
22 jury at trial.

23 MS. COLSON: Your Honor, just one last thing. I
24 don't mean to belabor this point, but if you look at the other
25 indictments for the other cases that we cited, Teh, Binday,

1 and even the cases that the Government sent to you recently,
2 the Second Circuit case, Tejada, in all of those cases the
3 indictment provides some information about the subject matter
4 or target of the grand jury investigation in contrast to the
5 indictment here.

6 THE COURT: Do you have anything else to add?

7 MR. PRAVDA: No, Your Honor.

8 THE COURT: The defense has also made an argument
9 that there has to be some sort of relationship between
10 subsection (c)(1) and subsection (c)(2) in order to support an
11 obstruction charge here under Section 1512. Do you want to
12 address that?

13 MR. PRAVDA: Yes, Your Honor. I think that what we
14 did in our opposition brief was to identify a number of cases
15 in which courts have held that 1512(c)(2) addressed conduct
16 that was wholly separate and apart from any documents or
17 object that were covered by 1512(c)(1), and those cases are
18 cited -- I'm sorry, Your Honor, one second. Those cases are
19 cited on page 36 of the Government's brief. And in reply, the
20 defendant argues well, the conduct in those cases is not the
21 conduct that the defendant engaged in. But that misses the
22 point of the argument. The point of the argument was that
23 there are all of these cases in which conduct that is very
24 generically defined as witness tampering that bears no
25 relation to a document or other tangible object have been

1 found adequate under 1512(c)(2). And the case that we just
2 forwarded to the Court last month, the Martinez case, the
3 Second Circuit affirmed a conviction for a police officer
4 under 1512(c)(2) and 1512(k) who had engaged in conduct that
5 also had nothing to do with destruction of documents or
6 tangible objects. What that police officer had done was
7 essentially to advise potential targets of a federal grand
8 jury investigation whether or not there were arrest warrants
9 for them so that they could decide whether or not to return to
10 the United States because they were outside the United States
11 at the time. This is conduct that clearly has no relationship
12 to a document or a tangible object, such as that covered in
13 1512(c)(1), yet the Second Circuit found no issue holding that
14 that conduct was sufficient to make out a case under
15 1512(c)(2).

16 And we also cited, Your Honor, Judge Glasser's
17 opinion, *Kumar*, which did go up to the Second Circuit but they
18 didn't reach the question, in which Judge Glasser found that
19 given the breadth of 1512(c)(2) and given all the legislative
20 history that he looked at, that it was apparent the 1512(c)(2)
21 was an independent prohibition on obstructive conduct and
22 wasn't limited by the language relating to a document or other
23 tangible object in 1512(c)(1).

24 Now, there is another case in this district, the
25 *Pugh* case that Judge Garaufis cited in which he did link

1 1512(c)(1) and 1512(c)(2). He acknowledged that. But the
2 underlying issue in *Pugh* was whether or not the defendant's
3 destruction of essentially thumb drives that he had brought
4 back with him from overseas fell within 1512(c)(1) and
5 1512(c)(2). And because we are talking about the destruction
6 of a tangible object, namely the computer thumb drives, Judge
7 Garaufis wasn't presented with a question of something that
8 might arguably fall within 1512(c)(2) that wasn't covered by
9 1512(c)(1). So we didn't really have occasion to consider the
10 question of whether 1512(c)(2) reached conduct that was not
11 covered by 1512(c)(1).

12 THE COURT: Is there anything that you would like to
13 add in response?

14 MS. COLSON: Yes, I would. The first, just with
15 respect to the Second Circuit case that the Government cited,
16 the scope of 1512(c)(2) wasn't actually a question presented
17 in that case and nor did the Court consider it. It just
18 wasn't an issue that actually came up.

19 The scope of 1512(c)(2) just remains an open
20 question in this circuit, even after the Martinez case
21 because, as I said, it wasn't addressed there. I believe the
22 Government's reading of 1512(c)(2) does not comport with the
23 plain language of the statute or with the Supreme Court's
24 reading of similar statutes in *Yates* and *Johnson*. The point
25 that we were trying to make in our brief is that the "or

1 otherwise" language in 1512(c)(2) forces the Court to
2 interpret 1512(c)(2) in conjunction with (c)(1), that (c)(2)
3 cannot be read independently of (c)(1). As Judge Garaufis
4 explains in *Pugh*, when you read the two provisions together,
5 they simply provide two ways of committing the same crime.

6 THE COURT: Well, but the facts of that case were
7 different. I had a case that is cited in the Government's
8 papers, *United States versus Batista*, where the defendant was
9 an NYPD detective accused of obstruction of justice and that
10 conviction was upheld in the Second Circuit and that was under
11 1512(c)(2).

12 MS. COLSON: I believe I read that case, Your Honor,
13 and I believe it is the same issue as Martinez, which is that
14 the defense simply didn't raise the scope of 1512(c)(2) before
15 this Court. I believe that 1512(c)(2) is directly analogous
16 to the provision in the Armed Career Criminal Act which is
17 discussed and analyzed in Johnson. The Armed Career Criminal
18 Act included a list of specific offenses and then it was
19 followed by a provision that begins with the language "or
20 otherwise," and the Court observed that by asking whether the
21 crime otherwise involved conduct presenting a risk, the
22 residual clause of the Armed Career Criminal Act forces courts
23 to interpret that clause in light of the enumerated crimes
24 listed before. And here as well, the use of the word
25 "otherwise" in 1512(c)(2) forces the Court to go back to

1 1512(c)(1) to figure out the meaning of that provision.

2 THE COURT: Except if the Congress intended (c)(2)
3 to apply in conjunction with (c)(1), then they would have said
4 "and." They would not have said "or otherwise obstructs,
5 influences, or impedes any official proceeding" to cover
6 situations where you are not necessarily talking about the
7 physical destruction of evidence in whatever form it may take,
8 whether it is a document, the shredding of documents or the
9 destruction of a thumb drive, or the destruction of a
10 computer, or other objects, (c)(1) addresses objects.

11 MS. COLSON: And I believe that (c)(2) is meant to
12 address objects as well.

13 THE COURT: It can, but it is not exclusive. It
14 says "or." It doesn't say "and."

15 MS. COLSON: I guess that's why I'm focused on the
16 word "otherwise," Your Honor, and in Johnson's interpretation
17 of the meaning of that word. What Johnson specifically said
18 is that the language in the Armed Career Criminal Act "or
19 otherwise" is what forces the Court to interpret the more
20 general provision in light of the more --

21 THE COURT: But isn't it difficult for Congress to
22 have to anticipate every single type of conduct that might
23 constitute obstruction?

24 MS. COLSON: Well, Your Honor --

25 THE COURT: It is going to be up to the jury to

1 determine whether or not the conduct actually amounted to
2 obstruction under (c)(2). There is the intent element, the
3 mens rea element, a person has to act corruptly, the
4 Government has to prove that, and then corruptly has its own
5 definition.

6 MS. COLSON: Your Honor, there are multiple
7 obstructions statutes, so I think Congress has thought long
8 and hard of what may constitute obstruction, although I agree
9 they can't anticipate every circumstance. But should the
10 Court accept the Government's invitation to stretch 1512(c)(2)
11 to reach the conduct alleged here, then this would expose
12 individuals to a potential 20-year sentence for the mere
13 attempt to impede or obstruct justice in any imaginable way
14 and where this sort of legislative sea change intended it is
15 unlikely that Congress would have done so in a residual
16 subsection which is subordinate to a provision that relates
17 only to documents.

18 THE COURT: Well, I don't know that it is
19 necessarily wrong if the Government can prove that an
20 individual's who is creative in finding a way to obstruct
21 justice that that person shouldn't be prosecuted, assuming
22 that the Government can prove the appropriate mens rea.

23 MS. COLSON: Well, the question is whether this
24 provision covers the conduct that the Government has alleged.
25 There are other provisions that deal with potential witness

1 tampering.

2 THE COURT: Right. Which involves more allegations
3 of force or intimidation and so on.

4 MS. COLSON: Right.

5 THE COURT: Which is not the case here --

6 MS. COLSON: I understand.

7 THE COURT: -- and the Government charged that under
8 the facts here as alleged in the indictment and in the
9 Government's papers, would not apply.

10 MS. COLSON: Would not apply or would apply?

11 THE COURT: Would not apply. I am talking about
12 subsection D, for example, whoever intentionally harasses
13 another person and thereby hinders, delays, prevents or
14 dissuades any person from attending or testifying in an
15 official proceeding. There is no harassment that is alleged
16 here.

17 MS. COLSON: That's correct, Your Honor. I, again,
18 go back to your question of what Congress intended, and I do
19 believe that if Congress intended this legislative sea change
20 that the Government suggests, that it is unlikely they would
21 have done so in this residual subsection of a provision that
22 relates only to documents.

23 THE COURT: All right. I have no further questions.
24 I thank you all for your time and for being so prepared.

25 As to the point, Ms. Colson, that you made in

1 connection with the smuggling, obviously to the extent that in
2 considering this motion -- I'm considering this motion
3 together with the CIPA motion that the Government has made.
4 To the extent that I think it necessary as part of addressing
5 your point in connection with the smuggling, that it is
6 necessary for you to have access to some of those materials,
7 obviously I can let the parties know that and I will certainly
8 hold the decision open to give counsel an opportunity to argue
9 that under seal. I'm not sure yet that it is necessary.

10 MS. COLSON: Thank you, Your Honor.

11 THE COURT: But it is something that I certainly
12 will consider as I am deliberating on the motion.

13 MS. COLSON: Thank you.

14 MR. PRAVDA: Your Honor, I know you have already
15 said this, but to the extent that you are considering that, we
16 certainly would like to be heard on that question, so we would
17 like the opportunity to address the Court. So thank you for
18 that.

19 THE COURT: Certainly. Certainly. I will do that.

20 I don't know if there are any other points. We did
21 I think have -- I don't think Harry Rucker is here today. But
22 in any event, I will be deciding this in due course. I don't
23 know that we have a date set yet, but it might be helpful to
24 have a control date set.

25 Are the parties available any time during the week

1 of September 12th, not September 11th, but September 12th.

2 MR. PRAVDA: Yes, Your Honor.

3 MS. COLSON: Yes, that's fine.

4 THE COURT: So how about September 12th, say, at
5 noon?

6 MS. COLSON: Okay.

7 THE COURT: That is for a status conference. I am
8 hoping to have an opinion out to you before that and obviously
9 if there is going to be additional briefing, I will let the
10 parties know that in advance.

11 MR. PRAVDA: One moment, Your Honor, we are trying
12 to make sure that that date works for us.

13 THE COURT: Of course.

14 MR. PRAVDA: Your Honor, would it be possible to do
15 Thursday or Friday of that week? I am on trial and my
16 colleagues may not be here either.

17 THE COURT: I have some time Friday morning, the
18 15th, if that is good for you, Ms. Colson.

19 MS. COLSON: That is fine, Your Honor.

20 THE COURT: 11 o'clock?

21 MS. COLSON: Just one moment.

22 MR. PRAVDA: We actually have a sentencing with Ms.
23 Colson.

24 THE COURT: How about the 14th at noon?

25 MS. COLSON: That is fine.

1 MR. RICHARDSON: That works for Government.

2 THE COURT: So September 14th at noon.

3 Time is excluded due to motion practice until the
4 14th.

5 MR. PRAVDA: Your Honor, I would just ask that time
6 also be excluded in the interest of justice, the reason being
7 that the Speedy Trial Act by operation of law only excludes
8 time for 30 days following oral argument and our control date
9 is more than 30 days away.

10 THE COURT: Any objection?

11 MS. COLSON: No, Your Honor.

12 THE COURT: It is also excluded in the interest of
13 justice. I am only concerned that there might be, again, the
14 CIPA issues involved, so I wanted to build in time to that.

15 Anything else that the parties would like to address
16 today?

17 MS. COLSON: I have one thing I would like to put on
18 the record. The Government discovery has provided us with
19 more than eight terabytes of materials, and that includes
20 dozens of electronic devices that were seized, some from my
21 client's home, but most from the offices of her employer back
22 in April of 2016. I have asked the Government whether they
23 intend to use any evidence from those electronic devices, and
24 they have said that they are not sure yet, but that at some
25 point in September they will give me a better sense and let me

1 know. I just want to make clear that if I don't receive an
2 answer from the Government in September, I will have to come
3 back and write to the Court.

4 THE COURT: Why will it take so long? How long ago
5 were these items seized?

6 How many terabytes did you say that it was?

7 MS. COLSON: It is more than eight. I believe it
8 was around 8.4 terabytes, Your Honor, and that the items were
9 seized in April of 2016. The Government conducted
10 simultaneously searches of my client's home and her employer's
11 offices.

12 MR. SOLOMON: If I could address this point.

13 THE COURT: Yes.

14 MR. SOLOMON: We have already informed Ms. Colson as
15 to which devices we are likely to use at trial and we just
16 need additional time to make sure that there is not additional
17 material from devices that we don't anticipate using. So we
18 have already given her clear guidance as to what she should
19 expect to see at trial should we make it to trial.

20 THE COURT: All right. We will see what happens
21 afterward.

22 MS. COLSON: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. PRAVDA: Thank you, Your Honor.

25 (Matter concluded.)